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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,528	06/23/2000	HORST FARBER	21543	9899
535 7590 08/25/2005 THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			EXAMINER HUSON, MONICA A	
			ART UNIT 1732	PAPER NUMBER

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/603,528

Applicant(s)

FARBER, HORST

Examiner

Monica A. Huson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartley et al. (U.S. Patent 4,952,134), in view of Nielsen (U.S. Patent 4,537,320). Regarding Claim 1, Bartley et al., hereafter "Bartley," show that it is known to carry out a method of making a sample tube (Abstract) comprising the steps of injection molding an intermediate tube in one piece with a cylindrical wall and a conical intermediate bottom spaced between ends thereof, integral with said wall and having an apex turned toward an end of said intermediate tube thereby forming a well adapted to receive a biological sample (Column 3, lines 20-27); heating said end of said intermediate tube and pressing edges of said end inwardly toward an axis of said intermediate tube to thermally reform said tube and provide at least a partial bottom end for the sample tube (Figures 5-6; Column 3, lines 32-34); and rounding the bottom end of the sample tube outside an injection mold in which said tube is formed by pressing a heated stamp thereagainst to cause said bottom end of said sample tube to be shaped to a concavity of a concave recess of said stamp and to be only partially closed by said stamp whereby said bottom end is self-orienting upon insertion of the sample tube into a stand (Figures 5-8; Column 1, lines 19-20; Column 3, lines 49-67; Column 4, lines 1-22). Bartley does not show removing a

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biological sample from the well by a pipette. Nielsen shows that it is known to permit removal of the biological sample from a molded sample tube by a pipette (Column 8, lines 31-34).

Nielsen and Bartley are combinable because they are concerned with a similar technical field, namely, molded articles that can hold biological samples. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Nielsen's pipette to extract material from Bartley's molded article in order to allow for the least disturbance of the biological sample as possible.

Regarding Claim 5, Bartley shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein said stamp heats said intermediate tube to a temperature at least equal to the flow temperature of a thermoplastic synthetic resin constituting said intermediate tube (Column 3, lines 32-34; Column 4, lines 15-22), meeting applicant's claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A. Huson whose telephone number is 571-272-1198. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Colaianni can be reached on 571-272-1196. The fax phone number for the organization where this application or proceeding is assigned is ~~703-872-9306~~.


571-273-8300

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Mah*

Mah  
August 22, 2005

  
**MICHAEL P. COLAIANNI**  
**SUPERVISORY PATENT EXAMINER**